

Shares and Assets Valuation Fiscal Forum – 31 October 2017
RICS, 12 Great George St, Parliament Square, London

List of attendees

Sarah Kelsey – SAV

Paul Simpson – SAV

Barry Roland – SAV

Tony Spindler – SAV

Mike Wilson – SAV

Bradley Downing– SAV

Melanie Powell – SAV

Evelyn Schmidt– SAV

Angela Belsten - Ernst & Young

Richard Bibby – Alvarez & Marsal Valuation Services LLP

Lynette Bober – ICAEW

David Bowes – Bruce Sutherland & Co

Roger Burton – Deloitte & Touche

Andrew Caldwell – Berkeley Research Group LLC

Susan Cattell – Institute of Chartered Accountants of Scotland

Cameron Cook – Macintyre Hudson

Anne Daly – BDO UK LLP

Errol Danziger – Danziger PLC

Nigel Eastaway – Macintyre Hudson

Dianne Elliott – BDO UK LLP

Rebecca Elnaugh – Smith & Williamson

William Franklin – Pett Franklin & Co LLP

Mark Gearing - Field Fisher

Stuart Gilham – Ernst & Young

Ben Griffin - Mazars

David Hadley – Mercer & Hole

David Haigh – Brand Finance Plc

Ashley Higgs – Smith & Williamson

Ed Higgs – BDO UK LLP

Robin Jackman – KPMG

Amarveers Johal – Grant Thornton

Oliver John - Mazars

Ralph Knight – Valuation Solutions

Susanne Kretchmer Noro – Grant Thornton

Tarlochan Lall - Monckton Chambers

Ian Logan - PWC

Steve Lygo – Parmentier Arthur

Preet Majithia – FTI Consulting

Samuel Marriott – Osborne Clark

Stephen Martin – Bishop Fleming

Kenton May - Burgess Hodgson

Jenny Nelder - Bruce Sutherland & Co

Sebastian van Oudheusden – Deloitte & Touche

Alun Reed – Pett Franklin & Co LLP
David Rogers – FTI Consulting
John Rugman – Smith & Williamson
Nataliya Shevenko – KPMG
Paul Sinclair - PWC
Andy M Southall – Grant Thornton
Charles Sword - PWC
Ritchie Tout – Mazars
Mahesh Varia - Travers Smith Braithwaite
Greg Wakenshaw – PWC
Steve Whitaker - PWC

Apologies-

Rebecca Clayton - PWC
Mark Collins – Synergy Tax Ltd
Matt Earp – Deloitte & Touche
Mairi Granville-George – Osborne Clarke
Courtney Holliday-Darby – Institute of Chartered Accountants in England and Wales
Noel Matthews – FTI Consulting
Sue Moore - Institute of Chartered Accountants in England and Wales
Ian Murphie - Share Plan Partners Ltd
Seamus Murphy – KPMG
Graham Nuttall - Field Fisher
Mike Pilgrem – FTI Consulting
Ken Read – Grant Thornton
Mick Ruse - M H Ruse LLP
Kirti Seth – Grant Thornton
Pavan Singh - KPMG
Hanut Singh Dey – KPMG
Gabbi Stopp - ifs Proshare
Travis Taylor - Navigant Consulting Europe Ltd
Mick Wong - PWC

1. Welcome

Andrew Knight (AK) from the Royal Institution of Chartered Surveyors (RICS) welcomed everyone to the RICS HQ. He spoke on two themes – the UK Business Valuation Group and its strategy and the CEIV (Certified in Entity and Intangible Valuations) certification.

RICS is a global membership body with a public interest mandate. It supports professionals and the end users, dealing with the qualification and regulation of professionals. Valuation of Businesses and Intangible Assets is one of the pathways offered by RICS. It aims to help members grow professionally and support and recognise business valuation as a profession. The Business Valuation Group's strategy is to implement and raise awareness of the CEIV accreditation, develop technical guidance, collaborate with other professional bodies to provide quality CPD and to become leading a Business Valuation regulator.

The CEIV credential began in the US as a response to regulatory concerns raised by the US Securities and Exchange Commission. The CEIV was launched very recently as a credential for professionals performing fair value measurements of businesses and intangible assets for financial reporting. The Mandatory Performance Framework provides guidance on the level of documentation and performance necessary to provide supportable and auditable fair value measurements. The credential is designed to enhance consistency, transparency and quality control in the fair value measurement process.

Lastly, AK explained how to gain the CEIV credential. Post accreditation, ongoing professional development and quality assurance are offered.

2. Overview of SAV – Sarah Kelsey (SK) and Barry Roland (BR)

SK gave a business overview of last year. SAV is part of Customer Strategy and Tax Design in the new HMRC structure. These are internal changes which shouldn't affect taxpayers or agents. SAV is also one of only a handful of HMRC teams to have achieved Tier 5 for Continuous Improvement and is now a model office within HMRC.

SAV has offered a regular programme of CPD events using internal and external speakers on a variety of topics. If anyone else would like to offer to present a CPD event to SAV, please contact kate.futter@hmrc.gsi.gov.uk

A training course for ten graduate trainee valuers is due to start in November. They will be also working towards RICS Associate membership.

Four other staff members have recently become RICS accredited and Paul Simpson is now a RICS Fellow.

BR went through some facts and figures from the last financial year. For the year ending 31 March 2017, SAV received 13,288 valuations and settled 13,484. SAV aims to concentrate on the cases which need to be looked at, and weed out those which do not need to be seen.

Last year SAV achieved a very good yield of £190m. This year up until the end of September the yield stands at £120m with 6271 valuations received and 6429 closed. SAV

also exceeded its post handling targets last year with over 90% of post dealt within 15 days and over 97% within 40 days. Valuers have been encouraged to make more use of the telephone and meetings to assist in speeding matters up.

Overtime was used to tackle a backlog of EMI requests which built up over the summer. The last customer survey was issued three years ago and a new survey will be sent out (digitally) either at the end of this year or early in 2018. BR encouraged everyone to fill the survey in as SAV do try to address issues raised.

3. Employment Income / Share Schemes – Tony Spindler (TS)

TS said that as at 30 September SAV had received 3163 Tax Advantaged Share Scheme (TASS) requests and 39 Employment Income related valuations. SAV has settled 3164 TASS requests and 155 Employment Income valuations generating an additional yield of £40.2m.

Following the 2016 Autumn Statement which altered the tax treatment of Employee Shareholder Status (ESS) cases, the number of ESS referrals has fallen dramatically from 365 in 2016 – 2017 to eight so far in 2017 – 2018.

TS explained that this year there have been discussions between SAV and the four leading UK employee share plan bodies (ESOP Centre, IFS Proshare, the Employee Ownership Association and the Share Plan Lawyers group). Since SAV's decision to withdraw the PTVS service in 2016, SAV and all these bodies have been looking for a way to provide meaningful guidance to customers to assist them in getting things right.

TS announced the launch of a new service today called the Employee Shares Worked Example Group (WEG) which is made up of the bodies mentioned above. The group's objective is to work with HMRC in publishing examples of share valuations over a range of employee share issues. Worked examples will be prepared or considered by the group and when deemed appropriate, will be presented to SAV for consideration. Where SAV are in agreement, SAV will look to introduce the examples into existing or potentially new guidance. All parties consider this a positive step as it allows the customer to work more collaboratively with HMRC when presenting their issues and solutions to valuation concerns. The ESOP will act as secretariat for the WEG and TS introduced William Franklin (WEG chair) to the Forum.

William Franklin explained everyone can participate in this group and submit worked examples. The aim is to build up examples (like those in the [SAV leaflet](#)) and the WEG will be a facilitator. For more information contact Robert Jarvis at the ESOP Centre - rjarvis@hurlstons.com.

TS then moved onto the questions submitted for discussion.

- i. Form VAL231 has to be completed online with no way to save a draft. If the form is completed and a change needs to be made, the form must be started from scratch. Would it be easier to have a similar system to the Form VAL

230 which allows you to download a paper copy and easily make adjustments as needed.

TS said that the VAL231 was one of the first HMRC digital forms. With HMRC moving towards a paperlite environment, it is not likely to return to a manually completed form. In the long term it is hoped that there will be an option to add attachments online and submit electronically. However, TS explained a workaround which could be helpful in the meantime. Once the VAL231 is completed, select the preview option and download the completed form as a pdf. Then try to open the pdf in an application such as Word and select 'YES' to the option to convert into an editable document. You will have a document which can be edited and amended.

- ii. VAL231 - clarification about the binary questions is sought. For the questions "Is there a prospect that there will be an opportunity for shares to be sold or exchanged?" and "is there a prospect of a flotation or other marketing event?" please could SAV give examples where the appropriate way to answer these questions would be no?

TS said that it is difficult to be specific here and list every scenario. However, the intention of share schemes such as EMI is to entice employees with a potential reward through some sort of exit prospect such as a sale or float. TS explained that EMI valuations are often in young companies when there is a hope of an exit, rather than an expectation. However, TS considers the question around a sale or exit could be relevant when the aspiration becomes a likely prospect. This could include a change of intention by the board, an acquisition interest from another company or purchaser or some form of private investment. If there is a shift in dynamics from a hopeful exit to a prospect of an exit, TS would expect to see the question answered positively and some details given.

There was a suggestion that the Yes/No option was sometimes too rigid, when the potential reply was not clear cut. Could agents answer 'possibly' and provide more context? TS said SAV would look into this.

- iii. What date would you advise us to include when the options are to be granted in the future on the VAL231?

TS reminded the forum that agents should only approach SAV when the company is in a position to grant the options. In these cases the timeline should be clear and agents should include the expected date. TS added that recently SAV has seen a significant increase in the number of EMI extension requests received with approximately 12% of the EMI referrals received being extension requests. TS pointed out that SAV's original acceptance letters allow for a 60 day window in which to grant options at the agreed value and SAV considers this is enough time to grant options if companies are only approaching SAV when they are ready to go. Companies should be anticipating granting options in this time period. Dealing with extension requests is slowing down SAV's ability to deal with other EMI work. TS said that if SAV continues to see high numbers of extension requests, we may have to reconsider our policy.

- iv. We have heard that HMRC has changed its methodology when valuing minority shareholdings and rather than accepting a 65% discount is now arguing for a 45% discount. We are not sure whether this has any basis in fact and would be grateful for an answer.

TS said that SAV has not changed its approach. It continues to be accepted that minority holdings attract a significant discount to reflect their restrictive rights. However, as with all valuations, this has to be placed within the context of the specific valuation under consideration. SAV removed guideline discount ranges from the SAV manual some time ago partly as SAV did not want arbitrary discussion of discount levels. If a short or medium return from the investor is anticipated, a lower discount may well be appropriate. If we are looking at a company with only limited opportunities to exit, then a higher discount may be valid. Ultimately, however, discount levels are case specific.

- v. We understand that HMRC considers the online template which replaced Form 42 to be a principle compliance tool – now that this has been in place for three years, could SAV provide an update on how it is affecting their flow of work and yield?

TS said that SAV does not hold figures on this form. He explained that this was used as a tool in conjunction with other data sources in identifying risk.

4. FRS 102, implications for calculation of contingent tax – Paul Simpson (PS)

A further question was raised for discussion on this topic.

- vi. At last year's meeting SAV indicated that there was no change of policy in relation to deduction of contingent CT, presumably on gains, although this was not stated.

What was also not stated was whether the question was raised as a consequence of the introduction of FRS 102. Given that as a general taxation concept "the tax follows the accounts..." does this apply equally so that a valuation follows the accounts, or is SAV proposing to add back the deferred/contingent tax that companies now have to provide for on revaluation of assets?

PS said that under 'Any Other Business' at the 2016 Fiscal Forum the following exchange took place:

SAV was asked whether there had been any change of policy on deductions for contingent CGT on the sale of company property. TS confirmed there was no change of SAV policy.

Based on this reply, PS has assumed that the question related to how SAV approached the issue of contingent CT on gains. He added that there was no suggestion that the question arose in connection with the New UK GAAP and FRS102 so has assumed that the question was not raised in that context.

PS said that there has been no change to the valuation basis or standard applicable for capital gains purposes in open market valuations. Thus, there has been no change in SAV's approach to arriving at a view on an open market value. The VOA will, if asked for a view on the Open Market Value of an investment property, add back any deductions for deferred tax.

5. Chattels rental rates – TS

TS attended the Chattels Fiscal Forum last week. From the mid-1990s onwards there has been a tacit acceptance by HMRC of a chattels rental rate of 1%. HMRC has had concerns that this historically used rental rate for chattels might be underestimated. SAV now has more evidence of rental rates for chattels and may start to challenge the 1% figure and see if this is a true commercial rate.

6. Litigation Update – BR

BR said, as agreed, SAV has emailed notification decisions to Fiscal Forum members once they are final and in the public domain. BR then went through the litigation cases settled in the past year.

Kerrison v HMRC. This was an avoidance scheme case creating artificial losses. Valuation points were not significant in this case which were largely concerned with scheme technicalities. HMRC's argument concerned the writing off of a loan. The First Tier Tribunal (FTT) found in HMRC's favour. The case is subject to appeal.

Estate of M Ross v HMRC. This was a Business Relief availability question. The FTT found that the management of holiday cottages was an investment activity so the cottages did not qualify for Business Relief.

Estate of MW Vigne v HMRC. This was also a Business Relief availability question. The FTT held that a large piece of land on which a horse livery business was conducted was not held as part of a business consisting in the holding of investments so that Business Relief applied. HMRC has been granted leave to appeal.

BR then discussed Gift of shares cases.

J Netley v HMRC. Here shares were gifted to charity at what HMRC considered to be a high price of 48p which was the figure the shares were traded at on the AIM stock exchange. The FTT looked at evidence of how the shares were listed on AIM markets and the degree of care taken in arriving at the listed price. The FTT found that the value of the shares was 17.5p which was the figure allotted at by an external party very shortly before flotation. The decision confirmed that HMRC were correct to look beyond the price quoted on AIM in determining market value. This is consistent with a judgement on an earlier case (Chartesea) involving a listing on the Channel Islands Stock Exchange.

A number of other gift of share cases are being taken forward and further hearings may be on the way. However, after the Channel Islands and Netley cases, many people involved in these cases are trying to get out of them as points of principle have mostly been addressed.

SAV has a panel of HMRC accredited valuation experts. In some cases, SAV sometimes asks for an outside second view, to help resolve issues. The panel was due to be renewed this year, but was delayed. However, a request for applicants will go out in the next few months if anyone is interested in applying to join.

A further question was raised for discussion on litigation issues.

- vii. SAV has long argued that it has no details of actual sales of medical practices, making it reluctant to accept the transfer of, indeed the very existence of, goodwill in such cases. Does this remain the Department's stance in light of the recent Tax Tribunal case, as yet unreported, that dealt specifically with such a real sale?

BR replied that in most of these cases, there was not an active market for such medical practices. Last year it was hoped to get a case to tribunal, but this has taken longer than expected.

David Bowes put forward that sales of medical practices take place all the time.

BR said that there are examples of the sale of practices but generally the person has gone with the sale, so the question is are the purchasers acquiring just the assets or the services of the individual as well. This is the evidence SAV sees, not a sale of the business and the individual walking away, but the individual continuing to provide services. BR said there was a difference between an orderly transfer of a business with a few key individuals staying on and a person being tied in for an extended period (not just for the passing on of knowledge).

BR said, as was mentioned last year, that if there is evidence of these sales, SAV would like to see it.

7. International Co-operation on Intangibles – PS

PS gave a brief update on recent developments concerning Transfer Pricing. The central theme is a coordinated approach with better levels of consistency.

There has been an increased focus on how multinational enterprises have been taxed since the financial crisis with a view to improving compliance. Within this the valuation of intangibles for transfer pricing purposes has been in the spotlight.

PS explained what some tax authorities have been doing in connection with the important issues around risk identification, handling and consistency. There are ongoing projects at the Organisation for Economic Co-operation and Development (OECD) concerning profit splits and hard to value intangibles. There is also an EU Joint Transfer Pricing Forum which aims to develop a coordinated approach and block loopholes. A "report on the use of economic valuation techniques in transfer pricing" should soon be released. The objective of the report is to build a bridge between the general practice of economic valuation and transfer pricing and work collaboratively.

Within the EU, a Fiscalis group is looking to develop consistency and help build capability. A recent event looked at trademarks and brands from a transfer pricing and a valuation perspective. Finally the Joint International Tax Shelter Information Collaboration (JITSIC) group has set up an IP project in 2017, aiming to promote better mutual understanding, interpretation and better practice.

8. AOB

BR asked for feedback on this Fiscal Forum. Agenda items are always most welcome.

TS said last year SAV had invited Fiscal Forum members to visit SAV in Nottingham for a tour and to discuss general issues. The offer is still open – contact tony.spindler@hmrc.gsi.gov.uk.

BR reminded Fiscal Forum members to please complete the SAV Customer Survey when it is released.

The next Fiscal Forum will be held in the autumn of 2018. SAV contact point is kate.futter@hmrc.gsi.gov.uk.